Mishnah The Mishnah now describes the procedure for execution by stoning:

בֵּית הַסְּקִילָה הָיָה גוּבַהּ שְׁתֵּי קוֹמוֹת – **The elevation of the stoning grounds was twice the height** of a man.[22] The condemned man is made to stand sideways at the edge of this elevation, and there, אֶחָד מִן הָעֵדִים דּוֹחֲפוֹ עַל מָתְנָיו – **one of the witnesses pushes him by his hips** so that he will fall to the ground on his side. נָהְפַּךְ עַל לִבּוֹ – **If he falls onto his chest,** הוּפְכוּ עַל מָתְנָיו – **he is turned onto his hips.**[23] וְאִם מֵת בָּהּ יָצָא – **If he had died from this** fall, **it is sufficient** [i.e. the court has fulfilled its obligation];[24] וְאִם לָאו הַשֵּׁנִי נוֹטֵל אֶת הָאֶבֶן וְנוֹתְנוֹ עַל לִבּוֹ – **if not, the second** witness **picks up the stone and casts it upon his chest.** אִם מֵת בָּהּ יָצָא – **If he dies from this, it is sufficient;** וְאִם לָאו רְגִימָתוֹ כָּל יִשְׂרָאֵל – **if not, his stoning is** carried out **by all of Israel,**[25] שֶׁנֶּאֱמַר – **as it states:**[26] ״יַד הָעֵדִים תִּהְיֶה־בּוֹ בָרִאשֹׁנָה לַהֲמִיתוֹ וְיַד כָּל־הָעָם בָּאַחֲרֹנָה״ – ***The hand of the witnesses shall be upon him first to put him to death, and the hand of the entire nation afterwards.***

1a

Gemara The Mishnah stated that the condemned man stood on a precipice that was twice the height of a man. A Baraisa elaborates upon this:

תָּנָא – **It was taught in a Baraisa:** וְקוֹמָה שֶׁלּוֹ – **AND** there was **HIS** own **HEIGHT** too; הֲרֵי בָּאן שָׁלֹשׁ – thus, **WE HAVE HERE** an elevation that is **THREE** times the height of a man.[27]

The Gemara asks:

וּמִי בָּעִינַן כּוּלֵּי הַאי – **And do we** really **need that much** height to cause the condemned to die? וּרְמִינְהוּ – **But contrast this with the teaching of [the following Mishnah]:**[28] מַה בּוֹר שָׁהוּא כְדֵי לְהָמִית עֲשָׂרָה טְפָחִים – The Torah specified the word "pit" to teach that **JUST AS** the average **PIT IS DEEP ENOUGH TO CAUSE DEATH,** being at least **TEN HANDBREADTHS** deep; אַף כֹּל כְּדֵי לְהָמִית עֲשָׂרָה טְפָחִים – **SO** too, **EVERY** other type of excavation must be **DEEP ENOUGH TO BRING ABOUT DEATH** – that is, **TEN HANDBREADTHS** – in order for the person who dug it to be liable for accidental deaths.[29] Evidently, then, a fall from the mere height of ten handbreaths is sufficient to cause death. Why, then, does our Mishnah require the condemned to be pushed from the considerably greater height of nine *amos*?[30]

The Gemara answers:

אָמַר רַב נַחְמָן אָמַר רַבָּה בַּר אֲבוּהּ – **It is because Rav Nachman said in the name of Rabbah bar Avuha:** אָמַר קְרָא – **The verse states:**[31] ,,וְאָהַבְתָּ לְרֵעֲךָ כָּמוֹךָ'' – ***You shall love your fellow as yourself,*** which implies: בְּרוֹר לוֹ מִיתָה יָפָה – If your fellow has been condemned to die, **you shall choose for him a favorable death.** Thus, since a fall from a higher elevation will kill the condemned more quickly and with less pain, the Mishnah ordained that the precipice be higher than the minimum necessary to cause death.

The Gemara asks:

אִי הָכִי לִיגְבַּהֵיהּ טְפֵי – **If so, let us raise [the elevation of the stoning grounds]** even **more!** – ? –

The Gemara answers:

מִשּׁוּם דְּמִינְוָול – We do not do this, **for it would cause [the body]** of the condemned to **become grotesque.**[32]

The Mishnah stated:

אֶחָד מִן הָעֵדִים דּוֹחֲפוֹ – ONE OF THE WITNESSES PUSHES HIM...

The Mishnah teaches that the condemned is first pushed off a precipice, and if he survives the impact of the fall, he is then stoned. The Gemara now presents the Scriptural source for this sequence:

תָּנוּ רַבָּנָן – **The Rabbis taught in a Baraisa:** מִנַּיִן שֶׁבִּדְחִיָּיה – FROM WHERE is it known that those who touched Mount Sinai on the day of the revelation at Sinai were to be executed BY PUSHING?[33] תַּלְמוּד לוֹמַר ,,יָרֹה״ – For THE TORAH STATES: *HE SHALL BE HURLED DOWN.*[34] וּמִנַּיִן שֶׁבִּסְקִילָה – AND FROM WHERE is it derived that he is to be executed BY STONING?[35] תַּלְמוּד לוֹמַר ,,סָקֹל[ו]״ – For THE TORAH STATES: *HE SHALL BE STONED.*[36] וּמִנַּיִן שֶׁבִּסְקִילָה וּבִדְחִיָּיה – AND FROM WHERE is it derived that when one method alone fails to kill the offender, he should be executed BY both STONING AND PUSHING? תַּלְמוּד לוֹמַר ,,סָקוֹל יִסָּקֵל אוֹ־יָרֹה יֵרָה״ – For THE TORAH STATES: *HE SHALL SURELY BE STONED OR HE SHALL SURELY BE HURLED DOWN.*[37] וּמִנַּיִן שֶׁאִם מֵת בִּדְחִיָּיה יָצָא – AND FROM WHERE is it derived THAT IF HE DIES FROM the PUSHING alone, [THE COURT] HAS FULFILLED its obligation? תַּלְמוּד לוֹמַר ,,אוֹ־יָרֹה יֵרָה״ – For THE TORAH STATES: *OR HE SHALL SURELY BE HURLED DOWN.*[38] מִנַּיִן שֶׁאַף לְדוֹרוֹת כֵּן – And FROM WHERE is it derived THAT these rules apply EVEN TO future GENERATIONS, TOO?[39]

NOTES

22. [The average man has a height of three *amos* (*Rashbam* to *Bava Basra* 100b ד״ה והכוכין; cf. *Tosafos* ad loc. ד״ה והכוכין). Thus, twice the height of a man is six *amos*.]

23. If he falls to the ground with his face downward, he must be turned over on his side so that the stones can be thrown onto his chest, as described below. He cannot be turned over onto his back, because it would be too great of an indignity for him to lie facing up. Therefore, he is positioned on his side so that stones can be thrown onto his chest but he does not face upwards (*Rashi*, as interpreted by *Aruch LaNer*).

Others interpret *Rashi* to mean that he is originally pushed in a way that causes him to fall face down, because it would be an indignity for him to fall facing up. After he has fallen, he is turned face up, since if he has already expired it is no longer an indignity [indeed, this is the position in which a corpse is buried]; if he is still alive, this indignity is necessary to hasten his death (*Shevus Yaakov* 1:5 cited by *R' Akiva Eiger*; cf. *Rambam, Hil. Sanhedrin* 15:1; *Kessef Mishneh* ad loc.; see also *Yad Ramah*).

24. I.e. although the condemned person has not actually been pelted with stones, the mitzvah of execution by stoning has nevertheless been fulfilled. The Gemara will explain why this is so.

25. I.e. everyone present at the execution throws rocks upon him.

26. *Deuteronomy* 17:7.

27. I.e. the condemned was pushed from a standing – not a sitting – position. Thus, the total distance he fell was equal to the height of three men (*Rashi*).

28. *Bava Kamma* 50b.

[The Torah states that if one digs a בור, *pit*, in public property, and an animal subsequently falls into it and dies, he is liable for the death (*Exodus* 21:33). Now, *a pit* is defined as an excavation that is round and narrow (see *Bava Kamma* 50b). The Mishnah, however, generalizes and states that regardless of the shape of the excavation, the person who digs it will be responsible for damage it causes. The question then arises as to why the Torah mentioned a round pit specifically. The Mishnah now addresses this question.]

NOTES

29. *Rashi;* cf. *Tosafos.* [If an animal is found dead after falling into *any* type of excavation – be it a pit, trench, or ditch – the one who dug it is liable only if the hole was at least ten handbreadths deep (*Rashi*).]

30. *Tos. HaRosh* points out that the Gemara's question presumes that a height sufficient to kill an animal is sufficient to kill a man. See *there* for an explanation as to how this assumption is made.

31. *Leviticus* 19:18.

32. A height greater than the one prescribed by the Mishnah would result in the smashing of the fallen body. Thus, it would add markedly to the indignity of his execution (see *Rashi*).

33. I.e. by being pushed off a precipice. Before the Jewish nation received the Torah at Mount Sinai, God told Moses to warn the people not to touch the mountain. This warning was worded as follows (*Exodus* 19:13): לֹא־תִגַּע בּוֹ יָד כִּי סָקוֹל יִסָּקֵל אוֹ־יָרֹה יִיָּרֶה אִם־בְּהֵמָה אִם־אִישׁ לֹא יִחְיֶה *Let not any hand touch it; for [whoever does so] shall surely be stoned, or shall surely be hurled down; whether it is a beast or a man, it shall not live.*

Malbim states that the simple meaning of the verse is that the mountain itself shall miraculously repel anyone who touches it, hurling the offending man or animal to its death. The Sages, however, understood the verse as teaching that the offender is to be judged by the courts and executed at their hands, with the methods of execution being "hurling" [i.e. pushing the offender off a precipice] and "stoning." The Baraisa now delineates the various stages of this exposition.

34. *Exodus* 19:13.

35. I.e. from where is it known that the verse also prescribes death through pelting with stones? (*Rashi*).

NOTES

36. Scripture uses the word סָקוֹל to connote the throwing of stones at someone so as to execute him; see, for example, *Deuteronomy* 22:21: וְסָקְלוּהָ אַנְשֵׁי עִירָהּ בָּאֲבָנִים, *And the men of her city shall pelt her with stones* (*Rashi*).

37. Had only the words סָקוֹל and יָרָה been written, it might have been thought that the offender is to be subjected to either *hurling* or *stoning*, but not both. The verse thus states יְיַרֶּנָּה, a repetitive form of the word *hurl*, which conveys that both methods are to be employed when necessary (*Rashi*). [*Rashash* explains that the extra word יְיַרֶּנָּה is written to convey the following meaning: Although the court is indeed to pelt the offender with stones (סָקוֹל יִסְקְלֶנּוּ), it shall not do just this; rather, it must first push the person off a precipice (יְיַרֶּנָּה), and *then* he should be pelted with stones (cf. *Chidushei HaRan; Rabbeinu Yonah*).]

38. The word אוֹ, *or*, conveys a break between *hurling* and *stoning*. It teaches that the court need not necessarily apply both these methods; should the offender die from hurling alone [the first stage of the execution process], this is sufficient (see *Chidushei HaRan*).

39. [Up to this point, the Baraisa has spoken only of the penalty to be administered to those who touched the mountain during the revelation at Sinai. The Baraisa now teaches that the same procedures are to be followed in every case that the Torah mandates the penalty of סְקִילָה, *stoning*.]

תַּלְמוּד לוֹמַר ,,סָקוֹל יִסָּקֵל״ – For THE TORAH STATES: *HE SHALL SURELY BE STONED.*[1]

The Gemara cites the next part of our Mishnah:

וְאִם לָאוּ עַד הַשֵּׁנִי נוֹטֵל אֶת הָאֶבֶן – IF the condemned person has NOT died from the fall, THE SECOND WITNESS PICKS UP THE STONE [and casts it upon his chest].

The Gemara questions this:

נוֹטֵל – Is it really so that only **[the second witness] picks up** this stone, lifting it through his own power alone? וְהָתַנְיָא – **But it was taught in a Baraisa:** רַבִּי שִׁמְעוֹן בֶּן אֶלְעָזָר אוֹמֵר – R' SHIMON BEN ELAZAR SAYS: אֶבֶן הָיְתָה שָׁם – THERE WAS A STONE prepared in THAT AREA [i.e. at the execution site], מְשׁוּי שְׁנֵי בְנֵי אָדָם – and its WEIGHT was such that TWO MEN were required to carry it. נוֹטְלָהּ – HE WOULD PICK IT UP, וְנוֹתְנָהּ עַל לִבּוֹ – AND THROW IT ON THE CHEST OF [THE CONDEMNED], אִם מֵת בָּהּ יָצָא – and IF HE DIES FROM THIS, IT IS SUFFICIENT. Evidently, then, the stone used for the execution was too heavy for one man to wield; yet our Mishnah teaches that the second witness would take the stone and cast it down by himself! – ? –

The Gemara replies:

וְלִיטַּעֲמֵיךְ – **But according to your reasoning,** why did you direct your question at our Mishnah? תִּיקְשֵׁי לָךְ הֵיא גּוּפָא – **[This Baraisa] you have cited is itself problematic for you.** On the one hand it states that מְשׁוּי שְׁנֵי בְנֵי אָדָם – the stone's WEIGHT was such that TWO MEN were required to carry it. But then it also states that נוֹטְלָהּ וְנוֹתְנָהּ עַל לִבּוֹ – HE [singular] WOULD TAKE IT AND THROW IT ON THE CHEST OF [THE CONDEMNED]![2] אֶלָּא דְּמַדְלֵי לָהּ בַּהֲדֵי חַבְרֵיהּ – **Rather,** you must say **that [the witness] picks it up along with his fellow** [the other witness], וְשָׁדֵי לָהּ אִידְּוּ – **and then he** himself **casts it** down,[3] כִּי הֵיכִי דְּתֵיתֵי מְרַוַּחַ – **so that [the stone] will come** down upon the condemned more **forcefully.**[4]

The Mishnah stated:

וְאִם לָאוּ רְגִימָתוֹ וכו׳ – IF the condemned has NOT died as a result of the stone cast upon him by the witnesses, HIS STONING IS carried out etc. [by all of Israel. . .].

The Gemara questions:

וְהָתַנְיָא – But it was taught in a Baraisa: מֵעוֹלָם לֹא שָׁנָה בָּהּ אָדָם – IT NEVER HAPPENED THAT A PERSON REPEATED [THE STONING PROCEDURE].[5]

The Gemara replies:

מִי קָאָמִינָא דְּעָבִיד – Did I state [i.e. did the Mishnah state] that it actually happened that way? דְּאִי מִיצְּרִיךְ קָאָמִינָא – I have only stated that the congregation is to stone the condemned *if* this is necessary; if it is never necessary, then it need not be done.

The Gemara returns to examine a Baraisa cited earlier:

אָמַר מַר – The master said: אֶבֶן הָיְתָה כוּ׳ – THERE WAS A STONE prepared in THAT AREA [i.e. at the execution site. . .] etc.

This language implies that there was a specific boulder at the stoning grounds that was always used for the stoning procedure. The Gemara now questions this:

וְהָתַנְיָא – But it was taught in another Baraisa: אַחַת אֶבֶן שֶׁנִּסְקַל בָּהּ – WHETHER IT WAS THE STONE THAT [THE CONDEMNED] WAS STONED WITH, וְאַחַת עֵץ שֶׁנִּתְלָה עָלָיו – OR THE BEAM ON WHICH HE WAS HUNG, וְאֶחָד סַיִיף שֶׁנֶּהֱרַג בּוֹ – OR THE SWORD WITH WHICH HE WAS BEHEADED, וְאֶחָד סוּדָר שֶׁנֶּחֱנַק בּוֹ – OR THE SCARF WITH WHICH HE WAS STRANGLED – כּוּלָּן נִקְבָּרִין עִמּוֹ – ALL THESE instruments of execution ARE BURIED WITH HIS CORPSE.[6] How, then, could it be that there was a certain stone that was used more than once?

The Gemara replies:

לֹא צְרִיכָא – No! [The ruling] of the Baraisa is needed only to teach דְּמִתְּקָנֵי וּמַיְיתֵי אַחֲרִינֵי חִלּוּפֵיהּ – that after one stone is buried, they would prepare another one and bring it to the stoning grounds to take its place.[7]

NOTES

1. The exposition is based on the fact that the verse stated the verb in the future tense, implying an application to future generations (Rashi). Had Scripture not meant to allow for this interpretation, it could have stated the verb in imperative form [סְקֹל] (see *Rashash;* cf. *Ran*).

2. This implies that only one of the two witnesses handled the stone; yet the Tanna just said that the stone was too heavy for one person to carry!

3. This is done without the assistance of the other witness who helped him pick it up.

4. If the witnesses were to attempt to throw the stone together, this would likely cause the stone to travel with *less* velocity. This is because the two would find it difficult to precisely coordinate the moment of release — at the moment one is casting the stone down, the other is still grasping it. The Mishnah and Baraisa thus teach that after the two witnesses have picked up the stone together, one removes his hands from it and the other casts it down upon the condemned (*Rashi;* cf. *Yad Ramah;* see *Aruch LaNer* here).

5. [The Mishnah seems to imply that at times the witness' casting of the stone upon the condemned would not kill him. This seems to contradict the Baraisa, which states that it was never necessary to "repeat" the stoning procedure. That is, after the witness had hurled the stone, it was never necessary for the assembled congregation to finish the stoning process.]

NOTES

6. This law is derived from *Deuteronomy* 21:23, which states: לֹא־תָלִין נִבְלָתוֹ עַל־הָעֵץ כִּי־קָבוֹר תִּקְבְּרֶנּוּ, *You shall not allow his body to remain [hanging] on the beam [all night]; rather, you shall surely bury him.* The redundancy in the words קָבוֹר תִּקְבְּרֶנּוּ is taken to convey that the beam itself shall be buried, too (46b). The same applies to other instruments of execution — e.g. the stone, sword and scarf (see *Rashi;* see *Rabbeinu Yonah*).

Rambam (*Hil. Sanhedrin* 15:9) explains the rationale behind the burial of these items. Had these items remained extant, they would have become a source of posthumous disgrace to the executed convict; passersby who saw them would remark, "This is the instrument with which so-and-so was killed." The Torah therefore ordained that these instruments be buried, in consideration of the man's dignity. [As a general rule, however, nothing extraneous is buried in the grave of a deceased person (*Margaliyos HaYam*).]

7. I.e. when the Baraisa states that "there was a stone in that area," it does not mean that a *particular* stone was always there; it means that a stone was always there in advance, having been placed there immediately after the previous execution.

Mishnah This Mishnah and the two that follow delineate the procedure for the other forms of execution:

מִצְוַת הַנִּשְׂרָפִין – This is the procedure for those who are burned: הָיוּ מְשַׁקְּעִין אוֹתוֹ בְּזֹהַל עַד אַרְכּוּבוֹתָיו – They would submerge him in manure up to his knees,[7] וְנוֹתְנִין סוּדָר קָשֶׁה לְתוֹךְ הָרַכָּה וְכוֹרְכִין עַל צַוָּארוֹ – and place a coarse scarf inside a soft one and wind it around his neck.[8] זֶה מוֹשֵׁךְ אֶצְלוֹ וְזֶה מוֹשֵׁךְ אֶצְלוֹ – This one pulls toward himself and this one pulls toward himself[9] עַד שֶׁפּוֹתֵחַ אֶת פִּיו – until he opens his mouth. וּמַדְלִיק אֶת הַפְּתִילָה – One lights a wick[10] וְזוֹרְקָהּ לְתוֹךְ פִּיו – and throws it into his mouth, וְיוֹרֶדֶת לְתוֹךְ מֵעָיו וְחוֹמֶרֶת אֶת בְּנֵי מֵעָיו – and it descends into his stomach and burns his intestines.

This procedure is disputed:

רַבִּי יְהוּדָה אוֹמֵר – R' Yehudah says: אַף הוּא אִם מֵת בְּיָדָם – But if he should die by their hands, i.e. by strangulation, **לֹא הָיוּ מְקַיְּימִין בּוֹ מִצְוַת שְׂרֵיפָה – they will not have fulfilled the commandment of burning![11] אֶלָּא פּוֹתֵחַ אֶת פִּיו בְּצִבַּת שֶׁלֹּא בְּטוֹבָתוֹ – Rather, one** pries **open his mouth with tongs against his will, וּמַדְלִיק אֶת הַפְּתִילָה – and** the other **one lights a wick, וְזוֹרְקָהּ לְתוֹךְ פִּיו – throws it into his mouth, וְיוֹרֶדֶת לְתוֹךְ מֵעָיו וְחוֹמֶרֶת אֶת בְּנֵי מֵעָיו – and it descends into his stomach and burns his intestines.**

All agree, however, that the burning is effected internally. This is questioned:

אָמַר רַבִּי אֶלְעָזָר בֶּן צָדוֹק – R' Elazar ben R' Tzadok said: מַעֲשֶׂה בְּבַת כֹּהֵן אַחַת שֶׁזִּנְּתָה – An incident once occurred **with the daughter of a Kohen that committed adultery, וְהִקִּיפוּהָ חֲבִילֵי זְמוֹרוֹת וּשְׂרָפוּהָ – and they surrounded her with bundles of branches and burned her.** Apparently *this* is the proper procedure for burning. **אָמְרוּ לוֹ מִפְּנֵי שֶׁלֹּא הָיָה בֵּית דִּין שֶׁל אוֹתָהּ שָׁעָה בָּקִי – They said to him:** That was **because the court at that time was not expert.[12]**

11a

NOTES

7. This prevents him from jumping around and causing the molten lead (see below) to pour out on his flesh rather than down his throat (*Rashi;* cf. *Yad Ramah*).

8. They wrap a soft scarf around a coarse one and then tighten it around his throat to force open his mouth. A soft scarf alone would not achieve the desired result, while a strong coarse cloth would abrade his neck and unduly disfigure him. Therefore, this combination is used (*Rashi*).

9. Each of the two witnesses who testified to his crime takes one end of the doubled cloth and pulls it towards himself (*Rambam, Hil. Sanhedrin* 15:3).

10. One of the witnesses performs this task (*Rambam, Hil. Sanhedrin* 15:3). The Gemara will discuss the nature of the wick.

11. If scarves are used, the condemned may well die from choking before the wick is dropped in, and the commandment to burn him will not have been fulfilled (*Rashi*).

12. They were Sadducees, who rejected the Oral Tradition and explained the written Torah literally (*Rashi* from 52b). Accordingly, that incident proves nothing.

The Gemara continues:

אִימְרָתָא בַּת טָלַי בַּת כֹּהֵן שְׁזִינְתָּה חֲוָאי – Imrasa the daughter of Tali was a Kohen's daughter who committed adultery. אַקְּפָה רַב חָמָא בַּר טוֹבִיָּה חֲבִילֵי זְמוֹרוֹת וְשָׂרְפָה – Rav Chama bar Toviah[2] had her surrounded with bundles of branches and burned her. אָמַר רַב יוֹסֵף – Rav Yosef said: טָעָה בְּתַרְתֵּי – He erred on two scores. Firstly, טָעָה בִּדְרַב מַתְנָה – he erred in regard to [the ruling] of Rav Masnah that execution by burning according to Torah law is effected by means of molten lead.[3] **וְטָעָה בִּדְתַנְיָא –** And secondly, **he erred in regard to** the ruling of **the** following **Baraisa: וּבָאתָ אֶל־הַכֹּהֲנִים הַלְוִיִּם וְאֶל־הַשֹּׁפֵט אֲשֶׁר יִהְיֶה בַּיָּמִים הָהֵם'' –** Scripture states: ***AND YOU SHALL COME TO THE KOHANIM, THE LEVIIM AND TO THE JUDGE WHO WILL BE IN THOSE DAYS.***[4] Kohanim are herein linked to judgment. This teaches that **בִּזְמַן שֶׁיֵּשׁ כֹּהֵן יֵשׁ מִשְׁפָּט – WHEN THERE IS A KOHEN** serving in the Temple, **THERE IS JUDGMENT** of capital offenses, **בִּזְמַן שֶׁאֵין כֹּהֵן אֵין מִשְׁפָּט –** but **WHEN THERE IS NO KOHEN** serving in the Temple, for example, when it is in a state of destruction, **THERE IS NO JUDGMENT** of capital offenses. Based on this Baraisa, Rav Chama had no right to carry out capital punishment, since he lived after the destruction of the Temple.[5]

The Gemara quotes the last segment of the Mishnah:

אָמַר רַבִּי אֶלְעָזָר בְּרַבִּי צָדוֹק מַעֲשֶׂה בְּבַת כֹּהֵן שְׁזִינְתָּה וכו' – R' ELAZAR THE SON OF R' TZADOK SAID: IT ONCE OCCURRED WITH THE DAUGHTER OF A KOHEN THAT SHE COMMITTED ADULTERY, etc. [and they surrounded her with bundles of branches and burned her. They said to him: That was because the court at that time was not expert].

The Gemara explains the Sages' response:

אָמַר רַב יוֹסֵף בֵּית דִּין שֶׁל צְדוּקִים הָיָה – Rav Yosef said: The Sages replied: **It was a court of Sadducees** who did this, who reject the Oral Tradition (i.e. the *gezeirah shavah* cited on 52a) and interpret the Torah in a literal fashion. Thus, that incident proves nothing.

The Gemara asks:

הֲכִי אָמַר לְהוּ וְהָכִי אֲהַדְּרוּ לֵיהּ – Indeed, **is this what [R' Elazar] said to [the Sages], and what they replied to him?** וְהָתַנְיָא – **But it was taught in a Baraisa:** אָמַר רַבִּי אֶלְעָזָר בְּרַבִּי צָדוֹק – **R' ELAZAR THE SON OF R' TZADOK SAID:** זְכוּרַנִי כְּשֶׁהָיִיתִי תִּינוֹק וּמוּרְכָּב עַל כְּתֵיפּוֹ שֶׁל אַבָּא – **I RECALL, WHEN I WAS A SMALL CHILD AND WAS RIDING ON THE SHOULDER OF MY FATHER,** וְהֵבִיאוּ בַּת כֹּהֵן שֶׁזִּינְתָה – **THAT THEY BROUGHT** out **A KOHEN'S DAUGHTER WHO HAD COMMITTED ADULTERY** וְהִקִּיפוּהָ חֲבִילֵי זְמוֹרוֹת וְשָׂרְפוּהָ – **AND SURROUNDED HER WITH BUNDLES OF BRANCHES AND BURNED HER** entire body. אָמְרוּ לוֹ – **[THE SAGES] REPLIED TO HIM:** קָטָן הָיִיתָ – **YOU WERE A MINOR** at that time, וְאֵין מְבִיאִין רְאָיָה מִן הַקָּטָן – **AND ONE CANNOT ADDUCE SUPPORT FROM** the testimony of **A MINOR.** Thus we see that the reason the Sages rejected R' Elazar's testimony was because he was a minor, and not, as the Mishnah records, because the court was composed of Sadducees. – ? –

The Gemara reconciles the contradiction:

שְׁנֵי מַעֲשִׂים הָיוּ – **These were two** different **occurrences.** One time they rejected his testimony because it concerned a time when he was a minor (the case of the Baraisa), and one time they rejected his testimony because he had witnessed a Sadducee court (the case of the Mishnah).

The Gemara inquires:

הֵי אָמַר לְהוּ בְּרִישָׁא – Now **which** incident **did [R' Elazar] relate to [the Sages] first?** **אִילֵימָא הָא קַמַּיְיתָא אָמַר לְהוּ בְּרִישָׁא** – **If you say he originally related to them the** incident **first** mentioned in this discussion (i.e. the occurrence recorded in the Mishnah), **אָמַר לְהוּ כְּשֶׁהוּא גָּדוֹל וְלֹא אַשְׁגּוּחוּ בֵּיהּ** – is it possible that after **he related to them** that which he witnessed **as an adult and they paid no attention to him,** **אָמַר לְהוּ כְּשֶׁהוּא קָטָן וְאַשְׁגּוּחוּ בֵּיהּ** – **he would** then **relate to them** an incident he witnessed **as a minor and expect that they would listen to him?** **אֶלָּא הָא אָמַר לְהוּ בְּרִישָׁא** – **Rather,** we must say that **he related to them this one** [the incident recorded in the Baraisa] **first,** **וְאָמְרוּ לֵיהּ קָטָן הָיִיתָ** – **and they told him: "You were a minor** and therefore we cannot accept what you are saying." **וְאָמַר לְהוּ כְּשֶׁהוּא גָּדוֹל** – **Then he told them** what he had witnessed **when he was an adult,** **וְאָמְרוּ לֵיהּ מִפְּנֵי שֶׁלֹּא הָיָה בֵּית דִּין שֶׁל אוֹתָהּ שָׁעָה בָּקִי** – **and they replied to him:** "We cannot accept this proof either, **BECAUSE THE COURT AT THAT TIME WAS NOT EXPERT,**" i.e. it was a court of Sadducees.

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2. Who lived during the Amoraic period [after the destruction of the second Temple] (*Rashi*).

3. [See *Chidushei HaRan* who discusses why Rav Yosef did not say that Rav Chama erred in regard to the Mishnah, which states clearly that burning is effected by dropping a burning wick down the condemned's throat.]

4. *Deuteronomy* 17:9.

5. For a vindication of Rav Chama, see *Chochmas Shlomo (Maharshal)*; cf. *Margaliyos HaYam*.

[*Tosafos* note that the Gemara could just as well have cited the more commonly quoted teaching that capital punishment can be administered only when the Great Sanhedrin operates out of its quarters in the Temple — see 14b and 87a. *Rashi* also appears to refer to this teaching. For a discussion of why two teachings are needed, see *Meromei Sadeh* loc. cit., *Chazon Ish, Shviis* 3:16, and *Chidushim U'Biurim*. See also *Rambam, Hil. Sanhedrin* 14:11).]

Mishnah מִצְוַת הַנֶּהֱרָגִין – This is the procedure for those who are beheaded: הָיוּ מְתִיזִין אֶת רֹאשׁוֹ בְּסַיִף – They would decapitate him with a sword, in the manner in which the government does.[6] בְּדֶרֶךְ שֶׁהַמַּלְכוּת עוֹשָׂה – R' Yehudah says: רַבִּי יְהוּדָה אוֹמֵר – It is a disgrace for him![7] נִיוּוּל הוּא לוֹ – Rather, they place his head on a block[8] and chop it off with an ax. אֶלָּא מְנִיחִין אֶת רֹאשׁוֹ עַל הַסַּנְדָּן וְקוֹצְצִין בְּקוֹפִיץ – They said to him: There is no more disgraceful manner of death than this![9] אָמְרוּ לוֹ אֵין מִיתָה מְנֻוָּלֶת מִזּוּ

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6. When the condemned was standing, they would cut off his head from the front, severing his trachea and esophagus and killing him instantly (*Meiri*). This was the manner in which civil authorities [i.e. the Roman government] of that time would behead their convicts.

7. The Gemara initially understands R' Yehudah to mean that it is disgraceful for him to be decapitated so that his body falls to the ground from a standing position (*Rashi*).

8. A thick wooden block held steady by being inserted into the ground (*Rashi*).

9. Because the blade of an ax is not as sharp as that of a sword and it smashes part of the neck rather than cutting it cleanly (*Yad Ramah*).

Gemara A Baraisa records R' Yehudah's response:

אָמַר לָהֶן רַבִּי – **It was taught in a Baraisa:** תַּנְיָא

אַף אֲנִי יוֹדֵעַ – **R' YEHUDAH SAID TO THE SAGES:** יְהוּדָה לַחֲכָמִים

שְׁמִיתָה מְגוֹלֶלֶת הִיא – **I ALSO KNOW THAT IT** [my method of decapitation] **IS A DISGRACEFUL DEATH.** אֲבָל מָה אֶעֱשֶׂה – **BUT WHAT CAN I DO,** שֶׁהֲרֵי אָמְרָה תוֹרָה ,,וּבְחֻקֹּתֵיהֶם לֹא תֵלֵכוּ'' – **SEEING THAT THE TORAH HAS SAID:** ***NEITHER SHALL YOU WALK IN THEIR ORDINANCES?***[10] Following the gentile practice of beheading by the sword is, therefore, forbidden.[11]

The Gemara records the Rabbis' response to this:

וְרַבָּנָן – **But the Rabbis** assert: כֵּינָן דִּכְתִיב סַיִיף בְּאוֹרַיְיתָא – **Since** beheading by **the sword is written in the Torah,**[12] לָא מִינַּיְיהוּ קָא גָּמְרִינַן – **we do not** in fact **derive** this practice **from them.** Accordingly, no violation of *neither shall you walk in their ordinances* has been committed.[13] דְּאִי לָא תֵּימָא הָכִי – **For if you do not say so,**[14] הָא דְּתַנְיָא שׂוֹרְפִין עַל הַמְּלָכִים וְלֹא מִדַּרְכֵי הָאֱמוֹרִי – regarding **that which was taught in a Baraisa: WE BURN** the personal articles **OF** deceased **KINGS,**[15] **AND THIS** does **NOT** entail a violation of the prohibition to follow in **THE WAYS OF THE EMORITES,** הֵיכִי שָׂרְפִינַן – **how may we** in fact **burn** these articles? וְהָכְתִיב ,,וּבְחֻקֹּתֵיהֶם לֹא תֵלֵכוּ'' – **Is it not written:** ***neither shall you walk in their ordinances,*** and it is the gentile custom to burn the personal articles of deceased kings? אֶלָּא כֵּינָן דִּכְתִיב שְׂרֵיפָה בְּאוֹרַיְיתָא – **Rather,** we must say that **since** the practice of **burning** for deceased kings **is recorded in the Torah,** דִּכְתִיב – **as it is written** in regard to King Tzidkiyahu: ,,וּבִמְשְׂרֻפוֹת אֲבוֹתֶיךָ וגו'' – ***and like the pyres of your fathers*** **etc.** [*that preceded you, so shall they make a pyre for you*],[16] לָאו מִינַּיְיהוּ קָא גָּמְרִינַן – **we do not derive** this custom **from [the gentiles].** Therefore, no violation is involved. וְהָכָא נָמִי – **Then here also,** כֵּינָן דִּכְתִיב סַיִיף בְּאוֹרַיְיתָא לָאו מִינַּיְיהוּ קָא גָּמְרִינַן – **since** execution by **the sword is recorded in the Torah, we do not derive** this practice **from them.** Hence, no violation is involved.[17]

The Mishnah below (76b) lists two sins for which the penalty of beheading is administered. The Gemara investigates the sources for these:

וְהָא דְּתָנַן בְּאִידָּךְ פִּירְקִין – **Now** in regard to **that which we learned in a Mishnah in the other chapter:**[18] אֵלּוּ הֵן הַנֶּהֱרָגִין – **THESE ARE THE ONES WHO ARE BEHEADED:** הָרוֹצֵחַ – **A MURDERER** וְאַנְשֵׁי עִיר הַנִּדַּחַת – **AND THE PEOPLE OF A SUBVERTED CITY,** בְּשֶׁלָּמָּא עִיר הַנִּדַּחַת כְּתִיב בַּהּ ,,לְפִי־חָרֶב״ – **it is well** that the people of **a subverted city** are beheaded, for **it is written concerning them:** *Smite the inhabitants of that city* ***by the edge of the sword.***[19] אֶלָּא רוֹצֵחַ מְנָלָן – **But** as far as **a murderer, from where do we derive** that he is beheaded?

The Gemara responds:

דְּתַנְיָא – **For it was taught in a Baraisa:** ,,נָקֹם יִנָּקֵם״ – Scripture states: *And if a man shall strike his slave or his maidservant with the rod and he shall die under his hand,* ***HE SHALL BE AVENGED.***[20] נְקִימָה זוֹ אֵינִי יוֹדֵעַ מַה הִוא – Now without elaboration, **I DO NOT KNOW WHAT FORM THIS "VENGEANCE"** should take, i.e. what method of execution should be employed. כְּשֶׁהוּא אוֹמֵר ,,וְהֵבֵאתִי עֲלֵיכֶם חֶרֶב נֹקֶמֶת נְקַם־בְּרִית״ – But **WHEN IT STATES:** ***I WILL BRING UPON YOU A SWORD, AVENGING THE VENGEANCE OF THE COVENANT,***[21] הֲוֵי אוֹמֵר נְקִימָה זוֹ סַיִיף – **I CONCLUDE** that **"VENGEANCE" IMPLIES** death by **THE SWORD.** Thus, we see that the punishment for murder is death by the sword.

The Gemara asks:

וְאֵימָא דְּבָרִיז לֵיהּ מִיבְּרַז – **But perhaps say** that the intent of the Torah is that **he should be stabbed.**[22] – ? –

The Gemara answers:

לְפִי־חֶרֶב״ כְּתִיב ,, – **For it is written** in regard to the people of a subverted city that they should be executed ***by "the edge" of the sword***. This indicates slicing, not stabbing.[23]

The Gemara asks:

וְאֵימָא דְּעָבִיד לֵיהּ גִּיסְטְרָא – **Then** perhaps we should **say he is cut in half** lengthwise. – ? –

The Gemara responds:

אָמַר רַב נַחְמָן אָמַר רַבָּה בַּר אֲבוּהּ אָמַר קְרָא – **Rav Nachman said in the name of Rabbah bar Avuha: Scripture states:** ,,וְאָהַבְתָּ לְרֵעֲךָ כָּמוֹךָ״ – ***And you shall love your fellow as yourself***[24] – בְּרוֹר לוֹ מִיתָה יָפָה – **choose for him a favorable death.**[25]

The Gemara asks:

אַשְׁכְּחַן דְּקָטַל עַבְדָּא – **We have** thus far **found** a source for beheading **one who killed a slave.** בַּר חוֹרִין מְנָא לָן – **From where do we derive** beheading for killing **a free man?**[26]

The Gemara responds:

וְלָאו קַל וָחוֹמֶר הוּא – **But is it not** derivable via **a *kal vachomer*?** קָטַל עַבְדָּא בְּסַיְיף – If **one who killed a** mere **slave** is executed **by the sword,** בַּר חוֹרִין בְּחֶנֶק – should one who killed **a free man** be executed **by** the less severe method of **strangulation?**

The Gemara qualifies its question:

הָנִיחָא לְמַאן דְּאָמַר חֶנֶק קַל – **This** response **is understandable according to the one who maintains** that **strangulation is** a more **lenient** penalty than beheading. אֶלָּא לְמַאן דְּאָמַר חֶנֶק חָמוּר מַאי אִיכָּא לְמֵימַר – **But according to the one who maintains** that **strangulation is** more **severe, what can be said?**

The Gemara responds:

נָפְקָא לֵיהּ מִדְּתַנְיָא – **He derives it from that which was taught in a Baraisa:** ,,וְאַתָּה תְּבַעֵר הַדָּם הַנָּקִי מִקִּרְבֶּךָ'' – Scripture states: ***AND YOU SHALL PURGE THE INNOCENT BLOOD FROM YOUR MIDST.***[27] הוּקְשׁוּ כָּל שׁוֹפְכֵי דָמִים לְעֶגְלָה עֲרוּפָה – **ALL SHEDDERS OF BLOOD ARE** herein **COMPARED TO THE *EGLAH ARUFAH.***[28] מָה לְהַלָּן [בְּסַיִיף וּ]מִן הַצַּוָּאר – **JUST AS THERE** the death of the calf is effected **[WITH A SWORD AND[29]] FROM THE NECK,** אַף כָּאן בְּסַיִיף וּמִן הַצַּוָּאר – **SO TOO HERE** in regard to the execution of a murderer, it should be performed **WITH A SWORD AND FROM THE NECK.**

The Gemara asks:

אִי מָה לְהַלָּן בְּקוֹפִיץ וּמִמּוּל עוֹרֶף – But **if** we compare the execution of a murderer to the decapitation of the calf, we should compare it precisely, as follows: **Just as there** the death of the calf is effected **with an *ax* and from the *back* of the neck,** אַף כָּאן בְּקוֹפִיץ וּמִמּוּל עוֹרֶף – **so too here** in regard to the execution of a murderer, it should be performed **with an *ax* and from the *back* of the neck.** – ? –

The Gemara responds:

אָמַר רַב נַחְמָן אָמַר רַבָּה בַּר אֲבוּהּ אָמַר קְרָא – **Rav Nachman said in the name of Rabbah bar Avuha: Scripture states:** ,,וְאָהַבְתָּ לְרֵעֲךָ כָּמוֹךָ'' – ***And you shall love your fellow as yourself*** – בְּרוֹר לוֹ מִיתָה יָפָה – **choose for him a favorable death.**[30]

NOTES

10. *Leviticus* 18:3. This is an admonition not to imitate the customs of the gentile nations.

11. It emerges from this Baraisa that when R' Yehudah said to the Rabbis, "It is disgraceful for him," he actually meant that it is disgraceful to imitate the gentile method of execution. The Rabbis, however, misunderstood him to mean that their method was disgraceful *per se*. They therefore responded to him that his method was even *more* disgraceful (*Ran*).

12. In regard to a subverted city (עִיר הַנִּדַּחַת) it is written (*Deuteronomy* 13:16): *Lay it waste. . . with the edge of the sword (Yad Ramah).*

13. [Since our practice stems from the Torah, we are not imitating them. There is no reason for us to abandon a practice of the Torah merely because the gentiles have adopted a similar one.]

14. [That whenever there is a Biblical source for a certain conduct, there is no violation of *neither shall you walk in their ordinances* even in a case where this conduct coincides with the custom of the non-Jewish nations.]

15. When a king dies, his bed and his personal effects are burned (*Rashi*) out of respect to him, so that no one else should use them (*Rambam, Hil. Melachim* 2:1).

16. *Jeremiah* 34:5. See 46b note 53; see also *Hagahos Ya'avetz* there.

17. R' Yehudah, on the other hand, maintains that since the Torah's requirement to behead by the sword can be fulfilled by using an ax as well [for the ax blade is a form of a "sword"], employing a sword constitutes following a gentile practice. The Rabbis argue, however, that since both a sword and an ax are included in the Torah's use of the word "sword," we cannot be said to be imitating their ways by opting for the sword (*Yad Ramah;* see also *Tosafos* to *Avodah Zarah* 11a ד"ה ואי חוקה). [For further discussion of the prohibition of following gentile customs, see *Tosafos* here and to *Avodah Zarah* 11a ד"ה ואי חוקה, *Ran* and *Meiri* here and *Yoreh Deah* 178 with commentaries.]

NOTES

18. Chapter 9, on 76b.

19. *Deuteronomy* 13:16.

20. *Exodus* 21:20. The verse speaks of a Canaanite slave, for whose murder the death penalty applies, since he is obligated to fulfill the mitzvos of the Torah incumbent upon a Jewish female (*Rashi*).

21. *Leviticus* 26:25.

22. How is it indicated that the sword is to be used for beheading? Perhaps the condemned should be stabbed in the stomach or neck with it (*Rashi*).

23. *Psalms* 149:6 speaks of חֶרֶב פִּיפִיּוֹת, *a double-edged sword*, indicating that there are two edges. Thus, the expression "by the edge of the sword" must refer to the sword's long side, to which there are two edges, not to the point, of which there is only one (*Rashi* with *Maharsha*).

24. *Leviticus* 19:18.

25. Since we have the option of executing the condemned by beheading him or splitting him lengthwise in two, it is preferable that he be beheaded, because this is not as gruesome a death (*Yad Ramah*).

NOTES

26. The verse *he shall be avenged,* from which the punishment of beheading for murder was derived, refers to the murder of a slave. In regard to the murder of a free man, however, the verse states simply (*Numbers* 35:17): מוֹת יוּמַת רֹצֵחַ, *The murderer shall be put to death,* and, as we learned above, wherever the Torah does not specify any particular method of execution, the perpetrator is strangled. There seems, therefore, to be no source that a murderer of a free man is beheaded (*Rashi*).

27. *Deuteronomy* 21:9. This verse appears at the conclusion of the section of the *eglah arufah,* the decapitated calf. If the body of a murder victim is discovered outside a town in Eretz Yisrael and it is not known who killed him, the Torah requires the elders of the town nearest the body to take a calf that was never worked and bring it to a valley of unworked ground, where it is decapitated (ibid. 21:1-4).

28. From the verse *and you shall purge the innocent blood from your midst,* it is derived that if after the *eglah arufah* is decapitated the murderer is found, he is still put to death (see *Rashi* ad loc. and *Tosafos* to *Kesubos* 37b ד״ה ואח״כ). Since the killing of the murderer is hinted at here, it is regarded as compared to the *eglah arufah* (*Ran;* cf. *Rabbeinu Chananel* from *Yerushalmi* 7:3).

29. *Maharshal* deletes the bracketed words; see *Kesubos* 37b. See also *Dikdukei Sofrim.*

30. Since the Torah leaves open the choice of executing a murderer with a sword and from the front of the neck, or with an ax from the back of the neck, it is preferable that he be beheaded with the former method, because this is a swifter death (*Rashi* to *Kesubos* 37b ד״ה מיתה). See note 9.

Mishnah מִצְוַת הַנֶּחֱנָקִין – This is the procedure for those who are strangled: הָיוּ מְשַׁקְּעִין אוֹתוֹ בְּזֶבֶל עַד אַרְכּוּבוֹתָיו – They would submerge him in manure up to his knees,[31] וְנוֹתֵן סוּדָר קָשֶׁה לְתוֹךְ הָרַכָּה וְכוֹרֵךְ עַל צַוָּארוֹ – and place a coarse scarf inside a soft one and wind it around his neck. זֶה מוֹשֵׁךְ אֶצְלוֹ וְזֶה מוֹשֵׁךְ אֶצְלוֹ עַד שֶׁנַּפְשׁוֹ יוֹצֵאת – This [witness] pulls toward himself and this [witness] pulls toward himself – until his soul departs.[32]

Gemara The Gemara cites the source for strangulation as the punishment for adultery:

תָּנוּ רַבָּנָן – **The Rabbis taught in a Baraisa:** Scripture states: *A man who will commit adultery with a man's wife, who will commit adultery with his fellow's wife, the adulterer and the adulteress shall be put to death.*[33] ,,אִישׁ״ פָּרַט לְקָטָן – The expression *A MAN* EXCLUDES A MINOR from liability as an adulterer.[34] ,,אֲשֶׁר יִנְאַף אֶת־אֵשֶׁת אִישׁ״ פָּרַט לְאֵשֶׁת קָטָן – The expression *WHO WILL COMMIT ADULTERY WITH A MAN'S WIFE* EXCLUDES A MINOR'S WIFE.[35] ,,אֵשֶׁת רֵעֵהוּ״ פָּרַט לְאֵשֶׁת אֲחֵרִים – The phrase *WITH HIS FELLOW'S WIFE* EXCLUDES THE WIFE OF OTHERS.[36] The verse then concludes: ,,מוֹת יוּמַת״ – *[THEY] SHALL BE PUT TO DEATH.* בְּחֶנֶק – This means BY STRANGULATION. אַתָּה אוֹמֵר בְּחֶנֶק – YOU SAY it means BY STRANGULATION, אוֹ אֵינוֹ אֶלָּא בְּאַחַת מִכָּל מִיתוֹת הָאֲמוּרוֹת בַּתּוֹרָה – BUT PERHAPS it means BY ONE OF THE OTHER forms of DEATH MENTIONED IN THE TORAH?[37] אָמַרְתָּ – To this YOU MAY ANSWER: כָּל מָקוֹם שֶׁנֶּאֱמַר מִיתָה בַּתּוֹרָה סְתָם – WHENEVER putting to DEATH IS MENTIONED BY THE TORAH IN AN UNDEFINED MANNER, i.e. without specifying the type of death, אֵין אַתָּה רַשַּׁאי לְמוּשְׁכָהּ לְהַחֲמִיר עָלֶיהָ אֶלָּא לְהָקֵל עָלֶיהָ – YOU HAVE NO RIGHT TO INTERPRET IT[38] in such a manner so as TO BE STRINGENT WITH IT, BUT RATHER TO BE LENIENT WITH IT.[39]

דִּבְרֵי רַבִּי יֹאשִׁיָּה – These are THE WORDS OF R' YOSHIYAH. רַבִּי יוֹנָתָן אוֹמֵר – R' YONASON SAYS: לֹא מִפְּנֵי שֶׁהִיא קַלָּה – The reason an unspecified form of death is interpreted as being strangulation is NOT BECAUSE [STRANGULATION] IS the most LENIENT form of execution,[40] אֶלָּא כָּל מִיתָה הָאֲמוּרָה בַּתּוֹרָה סְתָם אֵינָהּ אֶלָּא חֶנֶק – BUT because we have a principle that WHENEVER putting to DEATH IS MENTIONED IN THE TORAH IN AN UNDEFINED MANNER, IT MEANS SPECIFICALLY STRANGULATION. רַבִּי אוֹמֵר – REBBI SAYS: R' Yonasan's principle is derived as follows: נֶאֱמַר מִיתָה בִּידֵי שָׁמַיִם – DEATH AT THE HAND OF HEAVEN IS MENTIONED in Scripture,[41] וְנֶאֱמַר מִיתָה בִּידֵי אָדָם – AND DEATH AT THE HAND OF MAN IS MENTIONED in Scripture.[42] מָה מִיתָה הָאֲמוּרָה בִּידֵי שָׁמַיִם מִיתָה שֶׁאֵין בָּהּ רוֹשֶׁם – JUST AS THE DEATH MENTIONED AT THE HAND OF HEAVEN is A type of DEATH THAT LEAVES NO outward MARK on the body of the deceased, אַף מִיתָה הָאֲמוּרָה בִּידֵי אָדָם מִיתָה שֶׁאֵין בָּהּ רוֹשֶׁם – SO TOO THE DEATH MENTIONED AT THE HAND OF MAN must be A DEATH THAT LEAVES NO MARK on the body of the one executed. This refers to execution by strangulation.

The Gemara asks:

וְאֵימָא שְׂרֵיפָה – But say, perhaps, that this refers to burning, because execution by burning also leaves no mark on the body.[43] – ? –

The Gemara answers:

מִדְּאָמַר רַחֲמָנָא בַּת כֹּהֵן בִּשְׂרֵיפָה – Since the Merciful One stated that a Kohen's adulterous daughter is executed by burning, מִכְּלָל דְּהָא לָאו בַּת שְׂרֵיפָה הִיא – it can be inferred that this one [a non-Kohen's daughter who commits adultery] is not subject to burning.[44]

NOTES

31. So that he would not jump around and impede the process, thereby prolonging his own agony (*Tiferes Yisrael;* cf. *Lechem Mishneh* to *Hil. Sanhedrin* 15:3).

32. [This is the same procedure as that used to force open the condemned's mouth for burning (see Mishnah 52a and note 8 there), except that in this case the witnesses continue to pull until the condemned is strangled to death.]

33. *Leviticus* 20:10.

34. The word *man* implies a full-grown man, not a minor. [See sources cited in the margin of the Vilna Shas and by *Gilyon HaShas,* who discuss why this requires a specific Scriptural derivation, since a minor is exempt from punishment for *any* transgression.] Cf. *Meromei Sadeh.*

35. It teaches that a minor cannot effect betrothal (*Rashi*). Consequently, his wife is not considered to be legally married to him, and it is not considered adultery when a stranger cohabits with her. Cf. *Tosafos* to *Kiddushin* 19a; see also *Rabbeinu Yonah* here and *Aruch LaNer.*

36. I.e. the wife of a non-Jew. If a Jewess "marries" a non-Jew, *kiddushin* does not take effect, and she is legally deemed a single woman. Consequently, if she cohabits with a Jew, it is not considered adultery (see *Rashi* here and to *Sotah* 26b ד"ה ובת כהן; see *Ran* at length for a discussion of *Rashi's* view; cf. *Tosafos* to *Sotah* ד"ה יצא and *Meromei Sadeh* here).

37. The Torah does not state, or even imply, that their death should be by strangulation; it simply decrees: [*They*] *shall be put to death*.

38. Literally: to draw it.

NOTES

39. The Gemara states later that R' Yoshiyah was in possession of a *Halachah LeMoshe MiSinai*, an oral tradition communicated to Moses at Sinai, which teaches the four methods of execution in order of stringency, and lists strangulation as the most lenient method (see, however, 53a note 2). Accordingly, the Torah did not need to specify when strangulation was intended. For it knew that lacking proof to the contrary, we would of necessity interpret any unspecified death as strangulation, because we would have no right to risk unjustly punishing the criminal too severely (*Rashi*).

40. R' Yonason is of the same opinion as R' Shimon (Mishnah on 49b) that beheading is more lenient than strangulation (*Rashi*, from Gemara below).

41. In regard to Divinely imposed premature death it states (*Genesis* 38:10): וַיָּמֶת גַּם־אותו, *And He caused him to die also* (*Rashi*).

42. I.e. cases of capital punishment in which the method of death is not specified (*Rashi*).

43. As taught by the Mishnah on 52a, execution by burning consists of swallowing hot lead. The body thus remains outwardly intact.

44. Consequently, the verse *the adulterer and the adulteress shall be put to death* must refer to strangulation (*Rashi*).

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